

Exhibit H

In the Matter Of:

*EDWARD ALAN YEARTA vs
AMUSEMENTS OF AMERICA*

2:17-cv-2117

DOMINIC VIVONA

September 20, 2018



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30(b)(6)
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TENNESSEE
3 WESTERN DIVISION

4 EDWARD ALAN YEARTA,)
5 Plaintiff,)
6 VS.) Civil Action No.:
7 AMUSEMENTS OF AMERICA,) 2:17-cv-2117
8 INC.; DELTA FAIR, INC.;)
9 UNIVERSAL FAIRS, LLC;) JURY DEMAND
10 and BELLE CITY AMUSEMENTS,)
11 INC.,)
12 Defendants.)
13 AMUSEMENTS OF AMERICA,)
14 INC.,)
15 Crossclaim Plaintiff,)
16 VS.)
17 BELLE CITY AMUSEMENTS,)
18 INC.,)
19 Crossclaim Defendant.)
20

21 VIDEOTAPED RULE 30(b)(6) DEPOSITION

22 OF

23 DOMINIC VIVONA, JR.

24 SEPTEMBER 20, 2018

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<p>1 Incorporated.</p> <p>2 MR. TEITENBERG: And I'm going to</p> <p>3 hand you a copy of that. I have provided</p> <p>4 everyone else with copies earlier today, but I</p> <p>5 still have a few extra if anyone needs it. This</p> <p>6 will Exhibit 3, I guess.</p> <p>7 MS. TULLIS: Going to be number 1,</p> <p>8 right?</p> <p>9 MR. MAST: Three.</p> <p>10 (Whereupon, the above-mentioned document</p> <p>11 was marked as Exhibit 3 to the testimony of the</p> <p>12 witness, and is attached hereto.)</p> <p>13 BY MR. TEITENBERG:</p> <p>14 Q. Are you familiar with this document?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know who drafted this document?</p> <p>17 A. Someone at Delta Fair.</p> <p>18 Q. Do you have any idea who it would be at</p> <p>19 Delta Fair?</p> <p>20 A. No.</p> <p>21 Q. How do you know it was someone at Delta</p> <p>22 Fair?</p> <p>23 A. Because they sent it to me.</p> <p>24 Q. When did they send it to you?</p>	<p style="text-align: right;">26</p> <p>1 A. I mean, it's dated up here in 2016, but</p> <p>2 I'm not sure of the date.</p> <p>3 Q. Okay. I guess what I'm getting at, I</p> <p>4 didn't plow this ground with you, but it's my</p> <p>5 understanding that Amusements of America was the</p> <p>6 carnival operator from the years 2008 to 2016 for</p> <p>7 the Delta Fair?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. And do you know who drafted the</p> <p>10 original contract with Delta Fair in 2008?</p> <p>11 A. Delta Fair did. I'm not sure who it</p> <p>12 was. I'm assuming -- well, I'm assuming that.</p> <p>13 I'm not positive. I would have to see the</p> <p>14 contract.</p> <p>15 Q. Okay. And what leads you to believe</p> <p>16 that though?</p> <p>17 A. Because we have a standard boilerplate</p> <p>18 contract with terms that you fill in, and this is</p> <p>19 not that.</p> <p>20 Q. Okay. Can you tell me or tell the jury</p> <p>21 how this contract differs from A of A's standard</p> <p>22 contract?</p> <p>23 A. Ours is two pages.</p> <p>24 Q. I'm sorry?</p>
<p>1 A. Two pages. So a lot more detail.</p> <p>2 Q. Is it common for a fair organization</p> <p>3 such as Delta Fair, Incorporated to draft the</p> <p>4 contract in these types of agreements?</p> <p>5 A. For larger fairs that have legal staff,</p> <p>6 yes, or access to legal staff.</p> <p>7 Q. Do you know whether with respect to this</p> <p>8 particular agreement A of A had any hand in</p> <p>9 negotiating any of its terms?</p> <p>10 A. Well, I would assume so. You're asking</p> <p>11 if we just took a contract and signed it as is,</p> <p>12 so -- I mean I would assume some of the numbers</p> <p>13 and terms would have been discussed prior.</p> <p>14 Q. My next question was going to be, you</p> <p>15 know, which are most likely those terms that were</p> <p>16 negotiated?</p> <p>17 A. The percentages, number of rides.</p> <p>18 Q. All of the good stuff that is blacked</p> <p>19 out?</p> <p>20 A. Right, exactly, right.</p> <p>21 Q. Did A of A have any other agreements,</p> <p>22 whether written or unwritten, with Delta Fair,</p> <p>23 Incorporated with respect to the 2016 Delta Fair?</p> <p>24 A. No.</p>	<p style="text-align: right;">28</p> <p>1 Q. One of the things you were asked to talk</p> <p>2 about today in the deposition notice was the</p> <p>3 contracts with other operators such as Belle City</p> <p>4 Amusements, Prime Time Amusements.</p> <p>5 Are you prepared to talk about that</p> <p>6 today?</p> <p>7 A. Yes.</p> <p>8 Q. There is -- I have a copy here of the</p> <p>9 Belle City Independent Attraction Contract,</p> <p>10 copies for everyone else.</p> <p>11 (Whereupon, the above-mentioned document</p> <p>12 was marked as Exhibit 4 to the testimony of the</p> <p>13 witness, and is attached hereto.)</p> <p>14 Q. (BY MR. TEITENBERG) Do you recognize</p> <p>15 this contract?</p> <p>16 A. Yes.</p> <p>17 Q. Tell the jury what this contract is for?</p> <p>18 A. It's a contract that we use for when we</p> <p>19 subcontract amusement rides at our fairs.</p> <p>20 Q. So this is a contract whose form would</p> <p>21 have been essentially drafted by A of A?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. Is it typical to other contracts that</p> <p>24 you do with other independent attraction</p>

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<p>1 operators?</p> <p>2 A. Yes.</p> <p>3 Q. You would have a similar contract like</p> <p>4 this in 2016 with Prime Time Amusements, LLC?</p> <p>5 A. If we have one, if we had one, I don't</p> <p>6 know if we do.</p> <p>7 Q. Sometimes it's an oral agreement?</p> <p>8 A. Correct.</p> <p>9 Q. Did A of A have any other oral agreement</p> <p>10 with Belle City Amusements?</p> <p>11 A. Besides for this event, no, for this</p> <p>12 contract, no.</p> <p>13 Q. Outside of what's in the contract, does</p> <p>14 Amusements of America have any rules or</p> <p>15 guidelines that subcontractors have to abide by?</p> <p>16 A. Outside of the contract, I guess it</p> <p>17 depends. Would you be referring to like</p> <p>18 generators and so forth or --</p> <p>19 Q. Well, anything -- anything really.</p> <p>20 A. Well, I guess for a generator aspect,</p> <p>21 typically our policy is if you bring eight to ten</p> <p>22 or more rides, we would request electrical power</p> <p>23 as well to help power the equipment.</p> <p>24 Q. Okay. And by electric power, you mean</p>	<p>30</p> <p>1 generators?</p> <p>2 A. Yeah. That's not in the contract.</p> <p>3 Q. Okay. One of the things you were</p> <p>4 designated to speak about was the -- the TOSHA</p> <p>5 investigation that the State of Tennessee</p> <p>6 performed?</p> <p>7 A. Yes.</p> <p>8 Q. Have you read that TOSHA report?</p> <p>9 A. Yes.</p> <p>10 Q. And was there anything in that report</p> <p>11 that is inaccurate?</p> <p>12 MR. GRIFFEE: Object to the form.</p> <p>13 THE WITNESS: Do I still answer?</p> <p>14 MR. GRIFFEE: Yeah.</p> <p>15 THE WITNESS: The facts were laid out to</p> <p>16 my understanding, not being there, accurately.</p> <p>17 BY MR. TEITENBERG:</p> <p>18 Q. The facts are inaccurate?</p> <p>19 A. No. The facts are accurate to my</p> <p>20 understanding.</p> <p>21 Q. Oh, okay. Is there anything that A of A</p> <p>22 believes is inaccurate in that report?</p> <p>23 MR. GRIFFEE: Same objection.</p> <p>24 A. Based upon what the two penalties that</p>
<p>1 were listed, they were accurate.</p> <p>2 MR. TEITENBERG: And I have another</p> <p>3 document I would like to make an exhibit.</p> <p>4 (Whereupon, the above-mentioned</p> <p>5 document was marked as Exhibit 5 to the testimony</p> <p>6 of the witness, and is attached hereto.)</p> <p>7 BY MR. TEITENBERG:</p> <p>8 Q. These documents were produced by</p> <p>9 Amusements of America. Are you familiar with</p> <p>10 them?</p> <p>11 A. These documents?</p> <p>12 Q. Yes.</p> <p>13 A. Oh, you mean the actual -- yes, we</p> <p>14 turned it in, yes. We didn't create the</p> <p>15 documents, right.</p> <p>16 Q. Right.</p> <p>17 A. Okay.</p> <p>18 Q. I imagine these were created by the</p> <p>19 Department of Labor and Workforce Development of</p> <p>20 the State of Tennessee.</p> <p>21 A. Yes, yes.</p> <p>22 Q. And it indicates that there were fees</p> <p>23 and penalties assessed?</p> <p>24 A. Yes.</p>	<p>32</p> <p>1 Q. And there's -- the second page of this</p> <p>2 exhibit is a check from Amusements of America to</p> <p>3 the Treasurer, State of Tennessee in the amount</p> <p>4 of forty-five hundred dollars?</p> <p>5 A. Yes.</p> <p>6 Q. Is that the fine that Amusements of</p> <p>7 America paid?</p> <p>8 A. Yes.</p> <p>9 Q. Did Amusements of America make any</p> <p>10 attempt to dispute or appeal these citations?</p> <p>11 A. I made an attempt to dispute it when the</p> <p>12 investigator called me and asked what we were</p> <p>13 going to do with this report.</p> <p>14 Q. Can you tell the jury a little bit about</p> <p>15 that?</p> <p>16 A. I was called right around -- right</p> <p>17 before Christmastime when I got this report. And</p> <p>18 he said, I'm assuming you got the report, you</p> <p>19 know you have to pay -- you have thirty days to</p> <p>20 pay the fine.</p> <p>21 And I said it was, you know, a lot of</p> <p>22 money and could I do something else, a plan or</p> <p>23 something, because we are closed at that time of</p> <p>24 year.</p>

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<p>1 Q. And then how about the profits, do you 2 know how much of that is profit?</p> <p>3 A. About -- I think it's about three or 4 four hundred thousand.</p> <p>5 Q. I want to go back and talk about you 6 personally for a moment.</p> <p>7 A. Okay.</p> <p>8 Q. Have you ever been charged with a crime?</p> <p>9 A. No.</p> <p>10 Q. I think that's all I have. Thank you.</p> <p>11 A. Thank you.</p> <p>12 THE WITNESS: Oh, I'm sorry.</p> <p>13 EXAMINATION</p> <p>14 Q. (BY MS. TULLIS) Good afternoon. My name 15 is Mary Wu Tullis and I represent Belle City 16 Amusements, Inc.</p> <p>17 If I can refer you to the notice, the 18 30(b)(6) notice, that has been marked as an 19 exhibit previously?</p> <p>20 A. Okay.</p> <p>21 Q. I want to ask you specifically about 22 topic five, which says A of A's contracts and any 23 other arrangements or agreements it had with 24 Belle City Amusements, Inc. regarding the 2016</p>	<p>42</p> <p>1 Delta Fair and Music Festival. 2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. We have also marked as Exhibit 4 what is 5 called the Independent Attraction Contract.</p> <p>6 Do you see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Besides the Independent Attraction 9 Contract, are there any other contracts between 10 Amusements of America and Belle City Amusements, 11 Inc. regarding the 2016 Delta Fair and Music 12 Festival?</p> <p>13 A. No, ma'am.</p> <p>14 Q. Are there any other arrangements between 15 Amusements of America and Belle City Amusements, 16 Inc. regarding the 2016 Delta Fair and Music 17 Festival?</p> <p>18 A. I'm assuming we're talking about 19 generators again.</p> <p>20 Q. No. Well, I'm not asking specifically 21 about generators. I'm asking sort of more 22 generally, are there any other arrangements 23 between Amusements of America and Belle City 24 Amusements, Inc. regarding the 2016 Delta Fair</p>
<p>1 and Music Festival?</p> <p>2 MR. GRIFFEE: I will object to the form.</p> <p>3 A. Any other arrangements, which would be 4 what exactly?</p> <p>5 Q. How would you -- any other agreements 6 or --</p> <p>7 A. Nothing written, nothing written, no.</p> <p>8 Q. Are there oral arrangements or 9 agreements between Amusements of America and 10 Belle City Amusements, Inc. regarding the 2016 11 Delta Fair and Music Festival?</p> <p>12 A. Yes.</p> <p>13 Q. What are those oral agreements?</p> <p>14 A. One would be the generator for the site, 15 for usage during the fair. Let's see what else, 16 they would have to pay, I don't know if it's in 17 here or not, they would have to pay for trailer 18 rent for their employees and RVs.</p> <p>19 They would have to have the ride permits 20 for their rides. I'm not sure if that's in there 21 or not. I'm just -- but that's part of the 22 agreement.</p> <p>23 Q. Any other oral agreements that 24 Amusements of America has with Belle City</p>	<p>44</p> <p>1 Amusements, Inc. regarding the 2016 Delta Fair 2 and Music Festival?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. And those three oral agreements that we 5 talked about, they are not in the Independent 6 Attraction Contract that has been marked as 7 Exhibit 4, are they?</p> <p>8 A. I don't believe they are.</p> <p>9 Q. Is it Amusements of America's position 10 that the Independent Attraction Contract that has 11 been marked as Exhibit 4 did not contain any 12 provision that requires Belle City to supply 13 generators?</p> <p>14 MR. GRIFFEE: Object to the form.</p> <p>15 A. The written contract does not state 16 anything about generators.</p> <p>17 Q. And you mentioned that Amusements of 18 America had a requirement if a ride operator was 19 going to bring eight to ten rides that they would 20 request electrical power?</p> <p>21 A. Correct.</p> <p>22 Q. Is that a written requirement?</p> <p>23 A. Generally accepted practice that we use.</p> <p>24 Q. Okay. And how is that practice</p>

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<p>1 communicated to ride operators?</p> <p>2 A. When we talk about the ride lineup they</p> <p>3 were in. So we had discussed with Belle City</p> <p>4 this ride lineup. So at that point, and also</p> <p>5 obviously the monetary compensation, our</p> <p>6 percentage, that would have been discussed at</p> <p>7 that time.</p> <p>8 Q. Is it -- is the requirement to bring a</p> <p>9 generator to power all eight to ten rides?</p> <p>10 A. Logistically it's for power usage. It</p> <p>11 doesn't have -- they wouldn't specifically power</p> <p>12 their own rides. But because of that additional</p> <p>13 power of the eight rides needed, we need that</p> <p>14 generator.</p> <p>15 So it's needed in the whole scope of the</p> <p>16 fair, but it would not be used -- isolated with</p> <p>17 their specific rides.</p> <p>18 Q. So would it be fair to say that the</p> <p>19 requirement is one generator from the ride</p> <p>20 operators who are going to bring eight to ten</p> <p>21 rides?</p> <p>22 A. Correct. If they brought sixteen, they</p> <p>23 would be asked for two generators.</p> <p>24 Q. Are ride operators compensated for</p>	<p>46</p> <p>1 bringing a generator when they bring eight to ten</p> <p>2 rides?</p> <p>3 A. No, but we pay for all the fueling so</p> <p>4 they have no additional expense.</p> <p>5 Q. At what point is the requirement to</p> <p>6 bring a generator if a ride operator is going to</p> <p>7 bring eight to ten rides discussed?</p> <p>8 A. During the time we negotiate for the</p> <p>9 number of rides and the percentage.</p> <p>10 Q. Are there any situations where a</p> <p>11 generator to power -- or a generator for</p> <p>12 electrical use at a fair is not needed from a</p> <p>13 ride operator who is going to bring eight to ten</p> <p>14 rides?</p> <p>15 A. It's possible based upon the layout, the</p> <p>16 size of the grounds. If it's more compact, it's</p> <p>17 possible that you could get by with one less</p> <p>18 generator, but it's possible.</p> <p>19 Q. So it's not, I guess, a per se or an</p> <p>20 automatic rule that any ride operator --</p> <p>21 A. Sorry.</p> <p>22 Q. Let me repeat this for the record. So</p> <p>23 it's possible that if a ride operator brings</p> <p>24 eight to ten rides they could -- they would have</p>
<p>48</p> <p>1 some situations where they wouldn't be required</p> <p>2 to bring a generator?</p> <p>3 MR. GRIFFEE: Object to the form.</p> <p>4 A. We have never not asked for a generator.</p> <p>5 Always be safe than sorry.</p> <p>6 Q. Have you -- have there been situations</p> <p>7 where the generator that's brought by a ride</p> <p>8 operator who brings eight to ten rides is not</p> <p>9 used?</p> <p>10 A. Possibly.</p> <p>11 Q. Has that happened at the 2016 Delta</p> <p>12 Fair?</p> <p>13 A. No.</p> <p>14 Q. Has that happened at any Delta Fair?</p> <p>15 A. No.</p> <p>16 Q. When a ride operator who is bringing</p> <p>17 eight to ten rides to a fair is required to bring</p> <p>18 a generator, are there any other requirements</p> <p>19 asked of that ride operator?</p> <p>20 MR. GRIFFEE: Object to the form.</p> <p>21 A. Any other requirements asked of that</p> <p>22 ride operator? I mean, yeah, I guess, yes, but</p> <p>23 it's generally they have to wear our uniforms.</p> <p>24 They have to follow the hours posted of the fair,</p>	<p>49</p> <p>1 so they have to -- they have to honor the tickets</p> <p>2 that we provide for the fair, including</p> <p>3 complimentary passes, so they ride people for</p> <p>4 free.</p> <p>5 Q. And I'm sorry. That was probably a</p> <p>6 poorly worded question.</p> <p>7 What I wanted to ask is, are there any</p> <p>8 other requirements relating to the generator that</p> <p>9 are imposed on a ride operator who is required to</p> <p>10 bring one?</p> <p>11 MR. GRIFFEE: Same objection. Go ahead.</p> <p>12 A. Being it's their equipment, we expect --</p> <p>13 we assume they expect they will handle it,</p> <p>14 maintain it, operate it.</p> <p>15 Q. But Amusements of America does not place</p> <p>16 any requirements on that ride operator with</p> <p>17 respect to the generator, aside from bringing it</p> <p>18 to the fair?</p> <p>19 MR. GRIFFEE: Object to the form.</p> <p>20 A. Well, I mean, requirements like I said</p> <p>21 would be to operate it and maintain it.</p> <p>22 Generators, you have to change fuel filters, oil</p> <p>23 changes, just like a car on a regular basis.</p> <p>24 Q. Is the fuel that Amusements of America</p>